

# From Mars and Venus?

## Communicating with Investors Regarding Liquor Licensing Issues

Prepared by Flaherty & O'Hara, P.C.  
R.J. O'Hara  
Stan Wolowski

# Presenters



R.J. O'Hara, Esq.

J.D., cum laude, and B.A., English, University of Dayton

Partner, Flaherty & O'Hara, P.C., providing liquor licensing, transactional and litigation counseling and related services to clients in the beverage alcohol industry

Founding member of the Alliance of Alcohol Industry Attorneys and Consultants.



Stanley J. Wolowski, Esq.

J.D., University of Pittsburgh School of Law and B.A., Economics from Dickinson College

Former head of the Pittsburgh legal office of PA State Police Bureau of Liquor Control Enforcement

At Flaherty & O'Hara, P.C., handles all types of liquor license enforcement cases and liquor licensing matters

# I. Introduction

A.

- ❖ Being an Owner/Operator is like being one gender
- and
- ❖ Communicating with investors is like communicating with the other gender

Hence

**From Mars and Venus -  
Owner-Operators Communicating with Investors**

# I. Introduction, Cont'd

- B. When you're considering initiating a relationship with someone, you have to determine one crucial thing...  
..are we compatible?

Here, we'll explore at least one aspect of whether an owner/operator and an investor appear to be compatible...

\*Are we compatible on liquor license issues?



# I. Introduction, Cont'd

C. And as with all relationships, there is always some degree of risk...

We'll talk about that as well...What is the risk tolerance?



"For clients with an extremely low risk tolerance, I recommend they talk to someone with a ground-floor office."

# I. Introduction, Cont'd

- D. And finally, some folks like to know everything about the person with whom they desire romantic involvement early on, while others balk at such intimate disclosure...

We'll talk about why investors can't be shy...



## II. Starting Your Relationship Off on the Right Foot

- A. Getting to know each other – (due diligence)
  - 1. Ask early: “Are you dating anyone else? Because if so, you might not be able to date me.”
    - In other words: Mr. Investor, do you have an investment interest in any other business that manufactures or sells alcohol?
    - The three tiers



## II. Starting Your Relationship Off on the Right Foot – Cont'd

2. The Romance Killer – Tied House Evil
  - “Why State and Federal ‘Tied House evil laws’ may not let you invest in me.”



JEALOUSY



## II. Starting Your Relationship Off on the Right Foot, Cont'd

### 3. Love might be in the details...

- What do you own?
- Where is it located?
- U.S.? Europe? Asia? (Who cares?)
- How is it held?
- Separate legal entity?
- What's your percentage interest in it? In my company?

## II. Starting Your Relationship Off on the Right Foot Cont'd

### B. Still want to date?

#### 1. We better analyze the risk

- What is the risk?
- State by State?
- Federal?
- What's your risk tolerance?
- Disclosure vs. the Law?
- Disclosure vs. Risk?



## II. Starting Your Relationship Off on the Right Foot, Cont'd

2. “I’m a one woman man” (or, pick your “dream” - and your tier)
  - Investors Beware: Once you’re interested in me, you can’t be interested in (many) others - and you’re not going to be able to invest in another tier of the industry
  - What that means
  - How I’m flexible (other retailers are ok)
  - How I’m not flexible (I won’t stand for you having an interest in manufacturers or wholesalers)



## II. Starting Your Relationship Off on the Right Foot, Cont'd

### 3. Minimizing Risk

- Opinion of counsel?
- Opinion of ABC?
- Response to bad news?
- Will the deal collapse without you?
- Divestiture?



## II. Starting Your Relationship Off on the Right Foot, Cont'd

### 4. Ok, Let's Date...

- Leave the attitude behind
- What to expect regarding Tied House issues
- Saving time, money and headaches (saving the romance)
- Peeling the onion



# III. Moving Forward with a Beautiful Relationship

## A. Educating “High Net Worth Individuals”

1. What could be required from HNWI in a licensing investigation (or why there can't be secrets...)
  - Criminal histories
  - Fingerprints
  - Driver's license, birth certificate, passport
  - Home address histories
  - Personal & banking references
  - Family information (including children, spouses, and in-laws)
  - Employment histories
  - Financial information (including but not limited to source of investment)
  - Photographs
  - Affidavits



# III. Moving Forward with a Beautiful Relationship – Cont'd

## 2. Who this information could be required from

### a) On an individual basis

- Investors vs. officers and directors
- Differing percentage ceilings in different states
- A note on the norm & “outside the norm”  
(but..these are places where there are hotels, and restaurants and other interesting things)
- And nobody’s special...  
(well, a very few possible exceptional bright, shiny stars may get special treatment...Who?)



# III. Moving Forward with a Beautiful Relationship – Cont'd

- b) Corporate level disclosure
- Limited partnership agreements
  - LLC operating agreements
  - (A note: LLC structure where LLC members are LLC's and so on, ie. "no warm body" officers / managers & the problems that causes)
  - Verifiable source funds documentation (bank loan, line of credit, bank account, "showing capacity")
  - Confidentiality issues / agreements / FOIA requests / negotiations not to disclose and other requests by state





# III. Moving Forward with a Beautiful Relationship – Cont'd

## B. Couples Counseling

1. Lawyers are here to help you and your investors through the difficult times...
  - Need full disclosure up front, even if we're not going to disclose it
  - Be forthcoming with us (don't make us peel the onion)
2. We can negotiate less than full disclosure (and we're better at this if we know your secrets)



## III. Moving Forward with a Beautiful Relationship – Cont'd

3. We can help you help your investors (and protect their interests)
  - Some want no involvement – philosophically  
- in alcohol sales
4. A note on investor liability - Disclosure does not create or increase administrative or civil liability, *per se*, for investors

# Conclusion

## The keys to the Mars – Venus Relationship

1. Clear communication up front with potential investors – crucial to a smooth relationship. Communications must determine investors' other interests in liquor industry
2. Determine risk tolerance
3. Educate investors on possible / likely personal and corporate disclosure required in a liquor licensing investigation